

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208
	)	

**REPLY COMMENTS OF COMPETITIVE CARRIERS ASSOCIATION**

Competitive Carriers Association (“CCA”),<sup>1</sup> pursuant to Section 1.429(f) of the Federal Communications Commission’s (“FCC” or “Commission”) Rules,<sup>2</sup> respectfully submits these replies to comments and oppositions in response to Petitions for Reconsideration of the Commission’s *Report and Order* (“*MF II Order*”) adopting a framework for the Mobility Fund Phase II program (“MF II”).<sup>3</sup>

CCA applauds the FCC for adopting the *MF II Order*, which will make \$4.53 billion available to fill coverage gaps over the next ten years, and provides rural carriers certainty to maintain and enhance mobile broadband networks across the United States. CCA supports the Commission’s goals “to advance the deployment of 4G LTE service to areas that are so costly that the private sector has not yet deployed there and to preserve such service where it might not

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<sup>1</sup> CCA is the nation’s leading association for competitive wireless providers and stakeholders across the United States. CCA’s membership includes nearly 100 competitive wireless providers ranging from small, rural carriers serving fewer than 5,000 customers to regional and national providers serving millions of customers. CCA also represents approximately 200 associate members including vendors and suppliers that provide products and services throughout the mobile communications supply chain.

<sup>2</sup> 47 C.F.R. §1.429(f).

<sup>3</sup> *Connect America Fund, Universal Service Reform – Mobility Fund*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket Nos. 10-90 & 10-208, FCC 17-11 (rel. Mar. 7, 2017) (“*MF II Order*”).

otherwise exist,”<sup>4</sup> and to “encourage participation in an MF II auction by the widest possible range of qualified parties.”<sup>5</sup> CCA’s members actively construct advanced mobile wireless service to rural and remote areas, and accordingly, CCA has a significant interest in ensuring that the FCC’s support process under the *MF II Order* is appropriately tailored to promote network buildout in unserved and underserved areas. Many of CCA’s members participated in Mobility Fund Phase I (“MF I”). While helpful, MF I suffered from significant flaws that impeded its ultimate success. The Commission should therefore heed lessons learned from MF I and accordingly reform elements of MF II.

CCA encourages the Commission to reconsider certain rules adopted in the *MF II Order* to ensure that the program promotes, rather than stifles, stakeholder participation. In particular, the FCC should revise adopted rules that are overly burdensome and fail to rely on evidence in the record.

## **I. FUNDING DECISIONS SHOULD REFLECT CONSTRUCTION AND DEPLOYMENT REALITIES IN RURAL AREAS**

Based on record evidence, it is clear that significant funds are needed to meet the Commission’s goal of closing the digital divide. To achieve this shared goal, the Commission must award sufficient funds within a realistic schedule and disbursement timeline.

### **a. The MF II Budget Should Meet Funding Needs for the Construction of Mobile Wireless Networks in Rural Areas**

On reconsideration, the Commission should consider whether a larger budget is more appropriate to encourage ubiquitous network buildout. Chairman Pai continues to emphasize

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<sup>4</sup> *Id.* ¶ 2.

<sup>5</sup> *Id.* ¶ 130.

that closing the digital divide is a top priority for his tenure as FCC Chairman,<sup>6</sup> and CCA wholeheartedly supports this goal. To ameliorate this gap and maintain fiscal responsibility, the FCC must appropriately size the MF II budget to reflect the realities of deploying and maintaining wireless networks in rural and remote areas. CCA echoes those parties that express concerns over the lack of evidence to support the adopted budget of \$453 million per year.<sup>7</sup> To clarify these discrepancies, CCA's members continue to provide the Commission with information and data that indicates the need for a budget greater than that adopted in the *MF II Order*. For example, U.S. Cellular recently commissioned a study to estimate how much funding would be necessary to build and maintain a 4G LTE network in rural areas. The study concluded that “annual maintenance capital costs . . . would be approximately \$1.05 billion, while annual operational expenses . . . would be approximately \$1.08 billion, *in total approximately five times the amount budgeted for MF II.*”<sup>8</sup> Absent contrary evidence, such a fact-driven study should be relied upon by the FCC to determine an appropriate budget.

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<sup>6</sup> See, e.g., Ajit Pai, *Setting the Record Straight on the Digital Divide*, FCC BLOG (Feb. 7, 2017, 12:45 PM), <https://www.fcc.gov/news-events/blog/2017/02/07/setting-record-straight-digital-divide>; Ajit Pai, Chairman, FCC, Remarks, (Jan. 24, 2017); Ajit Pai, Former Comm'r, FCC, Prepared Remarks at the Brandery: “A Digital Empowerment Agenda” (Sept. 13, 2016) (“Hudson Institute Remarks”).

<sup>7</sup> *MF II Order* ¶ 14. See Comments in Support of Petitions for Reconsideration of Rural Wireless Association, Inc., 12-13 (filed May 16, 2017) (“RWA Supporting Comments”); Petition for Reconsideration and Clarification of Rural Wireless Carriers, 9-12 (filed Apr. 27, 2017) (“Rural Wireless Carriers Petition”).

<sup>8</sup> Rural Wireless Carriers Petition at 11 (emphasis added) (*citing Ex Parte* Letter from David LaFuria, Counsel for U.S. Cellular, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, et al. (filed Feb. 17, 2017), Enclosure, CQA, “Cost Study for 4G Unserved Areas” (Feb. 15, 2017) (“CQA Study”), at 1. CQA “developed a geospatial approach to assigning service and costs to currently unserved areas across the U.S. by identifying areas of potential service along roads.” *Id.* The study included the entire U.S., including Alaska, Hawaii, and Puerto Rico. *Id.* CQA also provided an explanation of the methodology it used in preparing the study. *Id.*, App. B (Methodology Documentation)).

Indeed, Chairman Pai has recognized that “[b]edrock principles of good government require that we make fact-based decisions that reflect marketplace realities,”<sup>9</sup> and that “[n]ow is the time to restore the place of economic analysis at the FCC.”<sup>10</sup> Commissioner O’Rielly shares this sentiment, and continues to emphasize the Commission’s obligation to “use data to inform and evaluate programs and policies to make them more effective.”<sup>11</sup> Applying these sentiments to MF II, failing to consider the realities of deploying a 4G LTE network in rural America could result in a greater chasm in the digital divide.<sup>12</sup> The FCC should increase its budget to reflect “rational, data-driven” calculations that better address “the urgent need to expedite the deployment of advanced mobile networks in rural communities across the country.”<sup>13</sup>

**b. Letter of Credit Requirements Should Be Reconsidered to Encourage Diverse Participation**

CCA also is concerned about the FCC’s requirement that MF II recipients secure a Letter of Credit (“LOC”) prior to the authorization of support, especially when the LOC must be set to at least the total amount of support for the first year. In reality, before a carrier can receive the following year’s support, it will have to increase the amount of the LOC to account for future funds to be disbursed.<sup>14</sup> What’s more, under this requirement, the LOC must be maintained to

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<sup>9</sup> Statement of Commissioner Ajit Pai, *On the FCC’s Ostrich-Like Approach to Competition in the Wireless Market* (rel. Dec. 23, 2015), available at [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-337035A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-337035A1.pdf).

<sup>10</sup> Hudson Institute Remarks at 1-2.

<sup>11</sup> Michael O’Rielly, Commissioner, FCC, Remarks at TPRC 44: Research Conference on Communications, Information and Internet Policy at 2 (Sept. 30, 2016).

<sup>12</sup> Rural Wireless Carriers Petition at 12.

<sup>13</sup> *Id.*

<sup>14</sup> *MF II Order* ¶¶ 171 -72.

cover support *even after certain construction milestones have been met*.<sup>15</sup> Therefore, these funds can “snowball[] quickly to an unmanageably large LOC requirement,”<sup>16</sup> which will leave little-to-no capital to construct and deploy the actual networks.<sup>17</sup> Competitive carriers often are required to invest significant capital (even up to 100% of the LOC amount) to obtain a LOC that satisfies the FCC’s framework.<sup>18</sup> Indeed, many CCA members have limited resources that should be dedicated to building and deploying new networks, rather than meeting overly burdensome LOC requirements. As an example, some CCA members have calculated that, at current interest rates, the LOC requirements as currently presented in the *MF II Order* will cost nearly 5% of the total ten-year bid value – ultimately squandering the “limited” funds available for support. The record likewise evidences that overly burdensome LOC requirements may “present a significant deterrent to participation by small entities. . . .”<sup>19</sup> which will undermine the FCC’s goal to inspire widespread participation in the MF II auction and ubiquitous 4G LTE deployment. Specifically, factoring the LOC’s administrative costs into a bid likely will increase unnecessary costs and reduce the amount of funds spent on rural broadband deployment. To further the Commission’s goal to provide \$453 million per year in funds for network buildout,

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<sup>15</sup> See Petition for Reconsideration of Buffalo-Lake Erie Wireless Systems, L.L.C., WC Docket No. 10-90, WT Docket No. 10-208, 3 (filed Apr. 27, 2017) (“Blue Wireless Petition”).

<sup>16</sup> *Id.* at 1.

<sup>17</sup> Indeed, “the expenditure of \$1 million on LoCs means that anywhere from one to three cellular towers will not be constructed.” Rural Wireless Carriers Petition at 23.

<sup>18</sup> U.S. Cellular documented costs of over \$1 million to comply with the current LOC regime for its 27 winning bids in Auction 901, which included yearly bank fees of over \$277,000 to keep open over \$17 million in LOCs to the FCC. See Rural Wireless Carriers Petition at 22. Indeed, the Commission recognizes that “obtaining a LOC incurs costs” and “anticipate[s] that bidders can incorporate these costs when determining their bids,” however, in light of the evidence provided by U.S. Cellular, just participating in the MF II auction might be cost-prohibitive for small or rural resource-strained carriers. *MF II Order* ¶ 167; see also Blue Wireless Petition at 2.

<sup>19</sup> Blue Wireless Petition at 4.

the FCC should factor into the MF II budget an additional percentage of funds to cover certain LOC requirements, and increase the total funding amount to ensure that a net total of \$453 million per year is actually spent on deploying LTE service.

While CCA supports recommendations to eliminate the LOC requirement,<sup>20</sup> CCA also recognizes the importance of implementing a system to safeguard against auction defaults and other USF waste, fraud, and abuse. Therefore, CCA supports an alternative proposal that the relevant LOC should (1) be proportionate to the amount of support received only; and/or (2) be permitted to be discharged after certifying to meeting the construction buildout.<sup>21</sup> This approach will free up critical funds and allow providers to focus on building and maintaining their networks.

**c. The FCC Should Disburse MF II Support Up Front Rather Than On A Monthly Basis**

As highlighted in the record, the FCC also should reconsider the timing of MF II support disbursements.<sup>22</sup> Carriers will be faced with significant up-front buildout and deployment costs at the beginning of the support term, and securing significant capital up front will allow

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<sup>20</sup> Indeed, CCA agrees that the FCC already has additional security built into the rules: “the threat of revocation or non-renewal of a license.” Rural Wireless Carriers Petition at 23.

<sup>21</sup> See Blue Wireless Petition at 4. In the alternative, if the FCC does not adopt this proposal, and declines to reconsider the timing of support disbursements generally (*see* discussion *Supra* Section I.c), then CCA supports providing winning bidders the opportunity to receive funding disbursements once the provider has constructed MF II facilities, in an effort to safeguard the MF II funding. Although CCA maintains that receiving funding at the forefront would be the most beneficial for construction and deployment, if the FCC declines to make such a change, then the next best option would be to use disbursements as a form of security rather than requiring winning bidders to divert additional funding towards a substantial LOC. *Id.* at 5.

<sup>22</sup> *Id.* at 18; CTIA – The Wireless Association Comments, WC Docket No. 10-90 *et al.*, at 10 (filed Dec. 21, 2012) (“CTIA Comments”).

recipients to expeditiously construct and deploy new mobile wireless networks.<sup>23</sup> Therefore, CCA urges the Commission to reconsider the MF II disbursement schedule to allow support recipients to receive larger funding installments at the beginning of the support term.<sup>24</sup>

## **II. USAC SHOULD NOT PERFORM DUPLICATIVE COMPLIANCE TESTING FOR VERIFICATION PURPOSES**

As noted above, many of CCA's members participated in the MF I process, and offer unique insights into the MF I process to help improve MF II. Industry agrees that duplicative Universal Service Administrative Company ("USAC") verification compliance testing weakens policy reforms that further the public interest by closing the digital divide. CCA encourages the Commission to clarify USAC's role with respect to compliance testing of recipients' MF II performance obligations.<sup>25</sup> As T-Mobile astutely recognizes, the *MF II Order* adopts a testing reporting requirement for USAC, but does not explain how USAC will verify the data it receives.<sup>26</sup> The FCC should explicitly prohibit duplicative drive-testing by USAC to validate data submitted by MF II recipients, which could result in unnecessary delays.<sup>27</sup> Instead, CCA agrees that the Commission should explain that winning bidders will conduct the required performance tests. By doing so, the Commission will help "ensure a cost-efficient process that avoids unnecessary, time-consuming duplication of effort,"<sup>28</sup> and further promote participation in

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<sup>23</sup> This will be especially important if the FCC maintains the current LOC requirements (*see* discussion *infra* Section I.b).

<sup>24</sup> *See* RWA Supporting Comments at 12-13; Rural Wireless Carriers Petition at 18; CTIA Comments at 10.

<sup>25</sup> Petition for Reconsideration of T-Mobile USA, Inc., WC Docket No. 10-90, WT Docket No. 10-208, 9 (filed Apr. 27, 2017) ("T-Mobile Petition").

<sup>26</sup> *Id.* at 10; *see also MF II Order* ¶¶ 196-99.

<sup>27</sup> T-Mobile Petition at 9.

<sup>28</sup> *Id.* at 2.

the MF II auction by outlining clear requirements and expectations with respect to the compliance testing process.

### **III. THE FCC MUST CLARIFY FUNDING PROCEDURES FOR COLLOCATIONS ON SUBSIDIZED TOWERS AND FACILITIES**

The *MF II Order* concludes that “all areas lacking unsubsidized, qualifying 4G LTE service will be eligible for the auction”<sup>29</sup> because “any given area with any provider of unsubsidized qualified 4G LTE is unlikely to be at risk of losing coverage.”<sup>30</sup> CCA supports a clarification that service provided from a carrier that is collocated on subsidized towers or facilities is not “unsubsidized competition” and therefore does not disqualify that area from receiving MF II support. CCA agrees with the Rural Wireless Carriers that engaging in collocation versus erecting a new tower are two very different approaches that require substantially different resources.<sup>31</sup> While building a tower in a remote location can cost millions, a carrier that collocates on a tower “has the luxury of hanging an antenna on the subsidized carrier’s existing tower, installing equipment in an existing or new shed, and paying rent. . .the newcomer is the beneficiary of the support that was provided to the carrier that built the tower.”<sup>32</sup> The carrier that collocated on the tower should not be considered “unsubsidized” for the purpose of MF II funding, because it is reaping the benefits of the subsidy by attaching to that tower. Indeed, collocation often is the only cost-efficient way that resource strained carriers can gain access to the infrastructure they need to support service in rural areas. Therefore, CCA requests that the FCC reconsider and clarify the *MF II Order* “so that when a supported tower

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<sup>29</sup> *MF II Order* ¶¶ 39, 52.

<sup>30</sup> *Id.* ¶ 53

<sup>31</sup> Rural Wireless Carriers Petition at 20.

<sup>32</sup> *Id.*



hosts a collocator, the covered area is not made ineligible for future universal support. Only when a competitor builds a tower that provides overlapping coverage should an area be declared competitive.”<sup>33</sup>

#### **IV. CONCLUSION**

For the reasons set forth above, CCA respectfully requests that the FCC reconsider certain aspects of the *MF II Order*. CCA looks forward to ongoing collaboration with industry and the Commission to promote a robust, efficient, and fiscally sound MF II program.

Respectfully submitted,

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<sup>33</sup> *Id.* at 21. See also RWA Supporting Comments at 8-10.

## **CERTIFICATE OF SERVICE**

I, Courtney Neville, hereby certify that on May 26, 2017, I caused a true and correct copy of the foregoing Reply Comments of Competitive Carriers Association to be served by first class mail upon the following:

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